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COMMISSIONERS

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY AT CASA GRANDE, PINAL
COUNTY, ARIZONA

DOCKET NO. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION
OF PALO VERDE UTILITIES COMPANY
FOR AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION
OF SANTA CRUZ WATER COMPANY FOR
AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-03576A-05-0926

IN THE MATTER OF THE APPLICATION
OF PALO VERDE UTILITIES COMPANY
FOR AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. SW-03575A-07-0300

IN THE MATTER OF THE APPLICATION
OF SANTA CRUZ WATER COMPANY FOR
AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-03576A-07-0300

1 ARIZONA WATER COMPANY, AN
2 ARIZONA CORPORATION,

3 COMPLAINANT,
4 VS.

5 GLOBAL WATER RESOURCES, LLC, A
6 FOREIGN LIMITED LIABILITY
7 COMPANY; GLOBAL WATER
8 RESOURCES, INC., A DELAWARE
9 CORPORATION; GLOBAL WATER
10 MANAGEMENT, LLC, A FOREIGN
11 LIMITED LIABILITY COMPANY; SANTA
12 CRUZ WATER COMPANY, LLC, AN
13 ARIZONA LIMITED LIABILITY
14 CORPORATION; PALO VERDE UTILITIES
15 COMPANY, LLC, AN ARIZONA LIMITED
16 LIABILITY CORPORATION; GLOBAL
17 WATER – SANTA CRUZ WATER
18 COMPANY, AN ARIZONA
19 CORPORATION; GLOBAL WATER –
20 PALO VERDE UTILITIES COMPANY, AN
21 ARIZONA CORPORATION; JOHN AND
22 JANE DOES 1-20; ABC ENTITIES I-XX,
RESPONDENTS.

DOCKET NO. W-01445A-06-0200
DOCKET NO. SW-20445A-06-0200
DOCKET NO. W-20446A-06-0200
DOCKET NO. W-03576A-06-0200
DOCKET NO. SW-03575A-06-0200

18 IN THE MATTER OF THE JOINT
19 APPLICATION OF CP WATER COMPANY
20 AND FRANCISCO GRANDE UTILITIES
21 COMPANY TO TRANSFER THEIR
22 CERTIFICATES OF CONVENIENCE AND
NECESSITY AND ASSETS TO PALO
VERDE UTILITIES COMPANY AND
SANTA CRUZ WATER COMPANY.

DOCKET NO. ~~W~~501775A-07-0485
DOCKET NO. SW-03575A-07-0485
DOCKET NO. W-~~20~~442A-07-0485
DOCKET NO. W-03576A-07-0485

23 **ARIZONA WATER COMPANY'S**
24 **OPENING POST-HEARING BRIEF**

25 Pursuant to the direction of Administrative Law Judge Dwight D. Nodes following
26 the hearing in this matter on June 8-9, 2009, Arizona Water Company submits this Opening
27 Post-Hearing Brief. The Arizona Corporation Commission ("Commission") should approve
28 the Settlement Agreement ("Settlement") entered into between Arizona Water Company and

Global Water Resources, LLC and related entities (collectively, "Global") on May 15, 2008 because the Settlement serves the public interest in numerous ways and Commission approval of the Settlement will provide greater certainty for the parties, for landowners and developers in the relevant area, and for the public in general. The Commission should grant Arizona Water Company's requested extension of its Certificate of Convenience and Necessity ("CCN") to the area identified in Arizona Water Company's amended extension application ("Requested Area") because of the demonstrated need for water service in that area and because Arizona Water Company is the fit and proper provider of such service to the Requested Area. Further, the Commission should specifically approve the planning areas ("Planning Areas") identified in the Settlement because such approval would also benefit the public.

I. THE COMMISSION SHOULD APPROVE THE SETTLEMENT REACHED BETWEEN ARIZONA WATER COMPANY AND GLOBAL BECAUSE OF THE NUMEROUS PUBLIC BENEFITS OF THAT SETTLEMENT.

A. Commission Approval of the Settlement Would Greatly Benefit Landowners in Pinal County, the Development Community, and the Public in General.

As the Commission will remember, the hearings in these matters on June 8-9, 2009 were the culmination of approximately three and half years of extremely complex and contentious proceedings. Global initially filed its application for an extension of its CCN in areas covered by these proceedings in December 2005. Arizona Water Company filed a competing application in March 2006, as well as a Complaint against Global before the Commission. The Complaint against Global resulted in extensive motion practice, with a number of motions to dismiss, a motion for an order to show cause, and even depositions of a number of witnesses. The parties also engaged in a number of discovery disputes, with motions to compel and motions for a protective order. The parties served pre-filed testimony in the Complaint case in August and November 2007, with a hearing set for January 2008. Both the Staff and the Administrative Law Judge encouraged the parties to engage in settlement discussions, which led to a Commission decision to continue the

1 hearing to allow those settlement efforts to proceed towards resolution of the issues in the
2 case.

3 On a separate track, the various competing CCN extension applications were
4 consolidated in April 2006. There followed a number of interventions by developers,
5 insufficiency issues raised by the Staff, numerous discovery disputes, and motions by Global
6 to vacate the consolidation and to dismiss Arizona Water Company's extension application.
7 The CCN extension applications were originally set for hearing in December 2006, but then
8 continued to March 2007. In February 2007, Arizona Water Company filed a motion to stay
9 the CCN application hearings pending developments in the Complaint matter, which motion
10 was ultimately granted by Administrative Law Judge Kinsey. The parties then sought to
11 include the CCN application matters in the ongoing settlement discussions in the Complaint
12 matter.

13 Ultimately, the parties docketed their Notice of Settlement on May 16, 2008. *See*
14 Exhibit A-1 (Garfield Prefiled Direct Testimony), Ex. WMG-3. Both the Complaint matter
15 and the CCN application matters were consolidated before Administrative Law Judge Nodes
16 in August 2008. Since that time, the parties have filed amended applications for extension
17 of their CCNs to give effect to their Settlement, and both the parties and the Staff filed
18 additional direct and/or rebuttal testimony presenting their positions on the Settlement itself
19 and the amended CCN applications. The consolidated proceedings ultimately resulted in
20 two days of evidentiary hearings on June 8-9, 2009.

21 The Settlement came after the strong encouragement of the Commission Staff and the
22 Administrative Law Judges involved in the Complaint and CCN extension actions that the
23 parties settle this matter, and it built on potential settlement solutions recommended by the
24 Staff itself. The Staff had previously recommended that the parties agree to a boundary
25 along Kortsen Road between their two service areas. The Settlement incorporated the
26 Staff's recommendation of using Kortsen Road as a boundary, with some exceptions so as to
27 allow unitary developments to be served by a single water provider. In the Settlement,

28 Arizona Water Company agreed to support the transfer of the CCNs held by Francisco

1 Grande and CP Water Company to Global, and further agreed to withdraw its Complaint
2 against Global. Arizona Water Company and Global agreed to amend their planning areas
3 to conform to logical and supportable geographic boundaries between the parties.
4 Significantly, Arizona Water Company and Global also agreed to cooperate on water
5 conservation efforts and to promote greater use of reclaimed water through an agreement by
6 which Global will sell and deliver reclaimed water to Arizona Water Company for use
7 within Arizona Water Company's CCN and Planning areas.

8 The Settlement provides clear benefits to the parties -- but also provides significant
9 benefits to the Commission, the Commission's Staff and the public at large. As a
10 preliminary matter, the Settlement results in the saving of significant time and legal and
11 other expenses, which would otherwise be dedicated to the resolution of the Complaint
12 matter and the competing CCN applications, for the Commission, Commission Staff, and the
13 parties themselves. Moreover, the Settlement not only resolves those pending matters, but
14 prevents the occurrence of numerous other disputes that could otherwise arise between
15 Global and Arizona Water Company. But for the Settlement, Global and Arizona Water
16 Company would be expected to repeatedly appear before the Commission to seek resolution
17 of competing and highly adversarial CCN applications.

18 In a unique geographic area of tremendous future potential development located
19 between two large competing private water companies, the Settlement resolves numerous
20 engineering and other issues by drawing logical and supportable boundaries between the
21 planning areas of the two companies. The planning areas follow major thoroughfares as
22 much as possible, taking into account the water service needs of known planned
23 developments and tracking the boundaries of those developments. The Settlement
24 encourages long-range, regional planning in general, rather than leaving the planning of
25 utility infrastructure to the uncertain sequence and schedules of single, isolated developers.

26 The Settlement also benefits the public by promoting greater use of reclaimed water
27 and consequently reducing reliance on other sources of water. *See* Ex. A-1, Garfield

28 Opening Testimony at 15-16; Ex. A-8, Schneider Opening Testimony at 17. Pursuant to

1 Paragraph 7(a) of the Settlement, the parties agreed that Global's wastewater subsidiary
2 would make its reclaimed water available to Arizona Water Company for resale to Arizona
3 Water Company's customers who can make use of reclaimed water. This agreement
4 between the parties constitutes a major milestone in furthering the beneficial use of
5 reclaimed water by Arizona Water Company and its customers, which the Commission
6 should encourage by approval of the Settlement.

7 Because of the numerous public benefits of the Settlement, numerous municipalities
8 and intervenors from the development community have supported and urged the
9 Commission to approve the Settlement. In particular, the Mayor of the City of Casa Grande
10 wrote the former chairman of the Commission to express his support, stating that "The
11 logical boundaries for water service and planning areas [the parties] have identified are
12 sensible and deserve the Commission's support and approval." Ex. A-2, Garfield Rebuttal
13 Testimony, Ex. WMG-15. The City of Casa Grande specifically supported the amended
14 CCN applications filed by Arizona Water Company and Global, as well as the planning
15 areas described in the Settlement. *Id.*; see also Ex. A-2, Garfield Rebuttal Testimony at 16.
16 No governmental entity, intervenor, or member of the public has objected to Commission
17 approval of the Settlement.

18 In short, the long history of complex and contentious litigation between the parties
19 has culminated in a Settlement (in much the way Staff recommended) which provides
20 significant benefits to the parties and the public, and which has gained unanimous support.
21 The Staff itself recognizes the numerous benefits of approving the settlement, from reducing
22 the drain on the time and energy of all of the stakeholders, as well as saving costs and aiding
23 the companies in long-range planning. Ex. S-2 (Pre-filed Testimony of Linda Jaress),
24 attached Staff Report at 1-2. In light of these significant benefits, the Commission should
25 explicitly approve the Settlement.
26
27

1 **B. The Staff's Arguments Against Approval of the Settlement Should Be**
2 **Rejected.**

3 The Staff has offered a number of arguments against Commission approval of the
4 Settlement between Arizona Water Company and Global; however, none of these arguments
5 has merit.¹ First, the Staff itself has recognized numerous benefits that would flow from
6 approval of the Settlement:

7 In general, the Agreement will serve to reduce the drain of management time
8 and costs of legal services of both companies by resolving the dispute over
9 service territories and the complaint of Arizona Water against Global. The
10 Agreement should also aid the Companies in their efforts to plan capital
11 improvements. . . .

12 The benefit of commission approval would be to instill more confidence in
13 the enforceability of the Agreement, reducing potential disagreements and
14 support for long term planning.

15 Ex. S-2, attached Staff Report at 1-2; *see also* Tr. 47-50 (Staff witness Linda Jaress
16 acknowledging benefits of the Settlement). These are significant benefits, which the Staff
17 subsequently downplays. As noted above, Commission approval would “instill more
18 confidence in the enforceability” of the Settlement – for example, by helping shield the
19 parties to the Settlement from claims of antitrust liability by allowing the parties to rely on
20 the *Parker* state action doctrine (addressed in more detail in Section II (C), *infra*.
21 Commission approval of the Settlement would provide support for long-term planning; on
22 the other hand, following the Staff's recommendation against Commission approval of the
23 Settlement would set back the planning efforts of both Arizona Water Company and Global
24 and risk sending them back to contentious litigation before the Commission over competing
25 service territory applications now and in the future.

26 The Staff also contends that paragraph 7(a) of the Settlement, under which Global
27 agrees to supply reclaimed water to Arizona Water Company for distribution within Arizona
28 Water Company's CCN areas and planning areas, improperly “restricts the sale of reclaimed

1 Arizona Water Company will address the separate but related issue of approval of the
Planning Areas *infra* at Section II of this Opening Brief.

1 water to anyone in Arizona Water's planning area except Arizona Water." Ex. S-2, attached
2 Staff Report at 1. The Staff further recommends that "the Commission place Global and
3 Arizona Water on notice that . . . the Commission will be the entity that determines which
4 utility provides which services in which geographic area." *Id.* The Staff's arguments
5 misunderstand the intent and function of the Settlement, as each of these underlying steps
6 would require Commission approval, as they do now.

7 As accurately noted in the pre-filed testimony of William Garfield, "Arizona Water
8 Company and Global agree that the Commission has authority to regulate all types of water
9 service, including reclaimed water, and this provision would apply to areas where the
10 Commission authorizes Arizona Water Company to be the water provider." Ex. A-2 at 17.
11 Moreover, paragraph 4(a) of the Settlement provides that the parties will jointly move for
12 and request "Commission approval of the Amended Planning Areas and CCN Applications
13 in accordance with the Commission's procedures." Ex. A-1, attached Ex. WMG-3. In
14 addition, paragraph 5 provides that the entire Settlement is subject to and conditioned upon
15 Commission approval, and that any party may withdraw from the Settlement and "terminate
16 any of the agreements and understandings contained herein" if the Commission refuses to
17 grant approval. *Id.*

18 Thus, the Staff's argument that paragraph 7(a) of the Settlement undermines the
19 Commission's authority to "determine[] which utility provides which services in which
20 geographic area" is groundless. There is no provision in the Settlement that seeks to restrict
21 Commission authority to approve utility service in the subject areas. Rather, the parties
22 have elected to address, as between the two of them, how the Commission might best decide
23 who provides service in those areas, in order to end a massive dispute about which utility
24 should serve which areas. Also, because the entire Settlement is conditioned upon
25 Commission approval, it makes no sense for the Staff to argue that a particular paragraph of
26 the Settlement challenges the Commission's authority (which, of course, it does not). If the
27 Commission disapproves of the Settlement, there likely will be no sale or distribution of
28 reclaimed water by Global to Arizona Water Company, and no Commission-recognized

1 Planning Areas in which Arizona Water Company could later seek Commission approval to
2 provide service, including reclaimed water service. Instead, rather than taking offense at a
3 misperceived slight to its jurisdiction, the Commission should recognize the parties'
4 attempts to implement the Commission's policies regarding increased beneficial use of
5 reclaimed water, and should approve the Settlement, including paragraph 7(a) promoting the
6 use of reclaimed water.

7 The Staff also contends that "the Companies do not need Commission approval" of
8 the Settlement, arguing that other entities such as Johnson Utilities and Diversified Water
9 Company have operated under a settlement agreement "for several years [and] Staff is
10 unaware of any associated problems." S-2, attached Staff Report at 2. The Staff presented
11 no evidence that any settlement between Johnson Utilities and Diversified was comparable
12 in any way to the Settlement at issue in this matter, and all the evidence suggests the two
13 settlements are not comparable. Tr. 66, 88, 153-54; *see also* Ex. S-2 at 26. Moreover, the
14 fact that the Staff is "unaware" of problems with another settlement does not mean that there
15 were no problems or that this Settlement would be problem-free if not approved by the
16 Commission. The Staff's argument that the parties "do not need Commission approval" also
17 ignores the potential antitrust concerns which, to undersigned counsel's knowledge based on
18 a review of the docket, were never raised in the Johnson/Diversified case. *See* Docket No.
19 WS-02987A-00-0775. The issues in that case are clearly distinguishable from the range and
20 magnitude of controversies and issues in these proceedings that are resolved by the
21 Settlement. Accordingly, Commission approval is prudent, necessary, and in the public
22 interest, and should be granted in this matter.

1 **II. THE COMMISSION SHOULD APPROVE THE PLANNING AREAS**
2 **AGREED TO IN THE SETTLEMENT BETWEEN ARIZONA WATER**
3 **COMPANY AND GLOBAL.**

4 **A. Approval of the Planning Areas Is Integral to Ensuring that the**
5 **Settlement Works.**

6 The parties and the Staff agree on the importance of long-term regional planning in
7 the provision of water utility service, particularly in an area such as western Pinal County,
8 which has both significant projected growth and limited access to groundwater. Ex. A-2 at
9 18. A water utility can only meet the demands of that projected growth by long-range
10 regional planning for both water resource management and the particular infrastructure by
11 which the area will be served. See Ex. A-1 at 24. Likewise, long range planning is essential
12 for a utility to effectively use both potable and non-potable water resources.

13 Regional planning is extremely difficult, if not impossible, when a water provider
14 proceeds in a short term, project-by-project manner, planning water service for one isolated
15 parcel and then another. Designing and constructing utility plant infrastructure in a
16 development-by-development manner results in an uncoordinated patchwork of facilities,
17 not a regional plan, and increases costs for both the utility and its customers. See A-9 at 4-7
18 (Schneider rebuttal testimony on costs of piecemeal approach); Tr. 188-92 (importance of
19 planning an integrated grid, and the impossibility of doing so with a patchwork CCN).

20 A crucial provision of the Settlement between Arizona Water Company and Global
21 involves Commission approval of Planning Areas for the companies' growth in western
22 Pinal County. Ex. A-1, attached WMG-3, ¶ 2. Paragraph 5 of the Settlement provides that
23 the Settlement itself is conditioned upon approval of the Planning Areas by the Commission.
24 Tr. 147 (testimony of W. Garfield that "the parties felt strongly that Commission approval of
25 the settlement agreement and planning areas was a key component of the settlement"). The
26 Planning Areas are based on logical and supportable geographic boundaries between
27 Arizona Water Company and Global's water utility, taking into account the water service
28 ~~needs and boundaries of planned developments. See Tr. 82-84 (W. Garfield testimony).~~

1 The Planning Area boundaries correspond to Arizona Water Company's Pinal Valley Master
2 Plan, as revised to comply with the Settlement, and are consistent with good engineering
3 practices and sound public planning policy. Ex. A-1 at 7, 20-21, 24-25.

4 Without Commission approval of the parties' Planning Areas, proceeding forward on
5 any of the other issues covered by the Settlement would be fraught with difficulty and
6 controversy, if not impossible altogether. For example, the amendments to the CCN
7 applications of the parties required an agreement on the Planning Areas; similarly, Arizona
8 Water Company's withdrawal of its objections to the transfers of the CCNs of CP Water
9 Company and Francisco Grande Utility Company is based on the parties' agreement and the
10 Commission's explicit recognition and approval of the Planning Areas. Likewise, the
11 precedent-setting agreement related to Global's sale of reclaimed water to Arizona Water
12 Company is premised on approval of the Planning Areas.

13 Commission approval of the Planning Areas would be beneficial to all of western
14 Pinal County, and would provide certainty and water supply reliability to the relevant
15 stakeholders, including municipal governments, Indian tribes, developers, builders,
16 customers, and others, both now and in the future. Ex. A-2 at 22-29; Tr. 127-28, 136-37.
17 As noted in the testimony of William Garfield, the municipalities in which Arizona Water
18 Company provides service have their own planning areas, and insist that Arizona Water
19 Company do likewise. Tr. 90-92. Long-range regional planning is impossible without a
20 framework and defined geographical areas. Tr. 124-25.

21 Approximately 15 months have passed since the parties docketed the Settlement, and
22 apart from Staff's reluctance, there has been no opposition whatsoever to the Planning Areas
23 from any municipality, governmental agency, developer, ratepayer, intervenor or other
24 person or entity. In fact, the City of Casa Grande has spoken out in favor of Commission
25 approval of the Settlement and Planning areas. Ex. A-2, attached WMG-15. As stated by
26 Mayor Bob Jackson:

27 The City of Casa Grande (the "City") is pleased that Arizona Water Company
28 and Global Water Resources, LLC have reached an agreement resolving water

1 service and planning issues that affect areas in and near the City. *The logical*
2 *boundaries for water service and planning areas they have identified are*
3 *sensible and deserve the Commission's support and approval. . . .* [T]he City
4 fully supports the planning efforts of Arizona Water Company and Santa Cruz
5 Water Company, including the Planning Areas identified by each of these
6 utilities.

7 *Id.* (emphasis added). Mayor Jackson further "urg[es] the Commission to approve the
8 amended CCN applications and Planning Areas of Arizona Water Company and Santa Cruz
9 Water Company, and thereby advance the public policy objectives these utilities will
10 achieve by effectively planning and providing for future water needs related to population
11 growth within the City and surrounding areas." *Id.*

12 The Staff has also recognized the many benefits provided by Commission approval of
13 the Planning Areas, including support for "efforts to plan capital improvements" and
14 "support for long term planning." Ex. S-2, Staff Report at 1, 2. These many benefits
15 provide compelling reasons for the Commission to approve planning areas in this instance.
16 Indeed, without Commission approval of the Planning Areas, the validity and effectiveness
17 of the Settlement itself would be in doubt.

18 **B. The Commission Should Disregard the Staff's Concerns About Approval**
19 **of the Planning Areas, Which Does Not Equate to a Grant of a Certificate**
20 **of Convenience and Necessity.**

21 The Staff's arguments against Commission approval of the Planning Areas in the
22 Settlement lack merit. The Staff's position is shortsighted, especially given the pressing
23 need for long-range, regional planning, which is consistently recognized by the Commission
24 and other governmental agencies. Ex. A-2 at 18-21. The Staff has suggested, for example,
25 that the approval of the Planning Areas would amount to an implied grant of a CCN. Ex. S-
26 2, Staff Report at 2. That just is not true. Approval of the Planning Areas would not be
27 equivalent to a grant of a CCN. Expansion of a CCN into those areas would still need the
28 explicit approval of the Commission after a full hearing, and the Planning Areas and
Settlement do not provide otherwise, or attempt to do so. Ex. A-2 at 19. Nor would
approval of the Planning Areas mean that the Commission would automatically approve any

1 rates during a rate hearing. *Id.* at 22-23. As testified to by Mr. Garfield, “A planning area is
2 simply that, a planning area. It’s not a guaranteed service area, but [Commission approval]
3 does have greater certainty for planning purposes than a self-determined planning area
4 without [Commission] oversight.” Tr. 91. Commission approval of the Planning Areas
5 would not result in a “preference” for Arizona Water Company or Global, but rather
6 “recognition from the Commission that [the] planning boundary and area is reasonable for
7 that utility to plan for.” Tr. 205.

8 The Staff also argues that the Commission should not approve the Planning Areas
9 because Arizona Water Company might “evolve into [a company] which [is] no longer fit or
10 proper to provide service to new areas” and “a utility with lower costs . . . may desire to
11 serve part of the planning areas.” Ex. S-2, Staff Report at 2. These concerns are
12 unwarranted. In the highly unlikely event that Arizona Water Company “evolved” into
13 anything other than the fit and proper company that it is and always has been, the
14 Commission would have no obligation – or legal authority – to grant a CCN to Arizona
15 Water Company, or any other utility for that matter, irrespective of the Planning Area. Ex.
16 A-2 at 23-24. Moreover, because of Arizona Water Company’s efficiencies of scale and
17 longstanding experience, it is completely unrealistic to expect that another water company,
18 particularly a small, start-up company, would have lower costs or be better able to provide
19 public utility service. Ex. A-9 at 10-11.

20 The Staff’s overriding argument against approval of the Planning Areas appears to be
21 that the Commission should not approve planning areas because the Commission has not
22 done so before and the Staff thinks it is unnecessary. The Staff premises this argument on
23 the hypothetical planning efforts of an individual utility company. However, the Staff’s
24 abstract argument ignores that the Planning Areas here have been formulated in the context
25 of a comprehensive settlement between two competing Class A water companies based on
26 sound engineering and water production and supply planning principles. Therefore, this
27 case presents both a pressing need and benefit for the Commission to approve the agreed-
28 upon identification of territory as planning areas for these two utilities. Thus, the

Commission should reject the Staff's argument against approval of the Planning Areas based on arguments that the Commission has not done this before and did not need to in the past. As the Commission has noted, these are new times calling for bold and creative innovations; the Staff's arguments make no sense in the context of the Settlement between Arizona Water Company and Global, which should be encouraged and embraced rather than discouraged and rejected.

C. Commission Approval of the Planning Areas and the Settlement Would Constitute State Action Providing the Parties With Defenses to Withstand An Antitrust Challenge.

One of the benefits of Commission approval of the Planning Areas and the Settlement recognized by the parties in the hearing is that such approval would constitute the requisite degree of "state action" providing a defense if a third party later brought a claim that the Settlement or the areas designated for future planning by the two parties violated antitrust law. Arizona Water Company's President, William Garfield, expressly noted in the record that state action immunity was among the benefits the parties anticipated in their Settlement and by agreeing to the boundaries of the Planning Areas:

[By Mr. Garfield:] I think there are benefits received in having the Commission approve such a settlement agreement.

For example, I'm not an attorney, but there is a benefit by having a public-bound Commission approve planning areas, settlement agreements, CC&N extensions, because we are not going to go [a]foul with antitrust by carving up areas on our own. And [we're not] defeating competition . . . in a vacuum among ourselves, we are seeking the Commission's approval and blessing for the settlement agreement and the planning areas.

Considering all public factors and benefits achieved and disadvantages and advantages and coming up with a decision that affirms the terms of the settlement, planning areas, and a CC&N.

[By Mr. Hains:] Fair enough.

Tr. 130-131 (W. Garfield Testimony).

1 The Commission enjoys “state action” immunity for its decisions to award CCNs to
2 applicants, thereby granting a monopoly and technically prohibiting competition, but acting
3 consistent with long-standing Arizona law and policy concerning utilities. For the reasons
4 set forth in the record and recited above, it is also good public policy to encourage
5 settlement of service area disputes and to agree on planning areas for the future. Global and
6 Arizona Water Company, as a result of Commission approval and supervision of the
7 Settlement, would gain the benefits of being able to raise defenses to an antitrust claim
8 arising from the Planning Areas, based on that sound public policy. Such planning actions
9 are consistent with the actions required to be taken by municipalities and other governmental
10 entities in Arizona under the “Growing Smarter” and “Growing Smarter Plus” statutes,
11 where mandatory planning steps are recognized to provide similar public benefits. *See, e.g.*
12 A.R.S. §§9-461.05, 9-461.06. Just as the municipalities surrounding Global’s and Arizona
13 Water Company’s service areas must plan for future development, so should these utilities’
14 efforts be embraced by the Commission through Commission review and approval of their
15 respective planning areas.

16 Express approval of the Planning Areas and Settlement by the Commission is not
17 only beneficial to the parties, it is beneficial to the Commission as well. The Sherman Act
18 provides that “Every contract, combination in the form of trust or otherwise, or conspiracy,
19 in restraint of trade or commerce among the several States, or with foreign nations, is
20 declared to be illegal.” 15 U.S.C. § 1 (2009). Some plaintiffs have sought to target public
21 and private utility companies with antitrust claims in the past. For example, in *City of*
22 *Lafayette, Louisiana v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978), the United
23 States Supreme Court held that a private electric utility could pursue an antitrust
24 counterclaim against two cities operating public electrical utility systems after the cities filed
25 antitrust claims against private utilities. *Id.* at 415-16; *see also McCarthy v. Middle*
26 *Tennessee Electric Membership Corp.*, 466 F.3d 399 (6th Cir. 2006)(electrical cooperatives
27 sued for antitrust violations); *Trigen-Oklahoma City Energy Corporation v. Oklahoma Gas*
28 *& Electric Co.*, 244 F.3d 1220 (10th Cir. 2001)(state-regulated electric utility sued for

1 antitrust violations); *Snake River Valley Electric Association v. PacifiCorp*, 238 F.3d 1189
2 (9th Cir. 2001)(electrical cooperative sued electric utility for antitrust violations); *Wall v.*
3 *City of Athens, Georgia*, 663 F. Supp. 747 (M.D. Ga. 1987)(water customers sued public
4 water utility for antitrust violations); *Grason Electric Co. v. Sacramento Municipal Utility*
5 *District*, 526 F. Supp. 276 (E.D. Cal. 1981)(municipal utility sued for antitrust violations).

6 However, the “state action” doctrine recognized in *Parker v. Brown*, 317 U.S. 341
7 (1943), provides antitrust immunity for conduct resulting from state policy. In *Parker*, the
8 plaintiff raisin producer sued the California State Director of Agriculture for his
9 enforcement of a state raisin marketing program, contending that the plan violated the
10 Sherman Act. 317 U.S. 344-45. The Supreme Court held that Congress never intended the
11 antitrust laws to prevent the states or their agents from enforcing state programs and policies
12 which might be characterized as having anticompetitive effects:

13 We find nothing in the language of the Sherman Act or its history which
14 suggests that its purpose was to restrain a state or its officers or agents from
15 activities directed by its legislature. In a dual system of government in which,
16 under the Constitution, the states are sovereign, save only as Congress may
17 constitutionally subtract from their authority, an unexpressed purpose to nullify
18 a state’s control over its officers and agents is not to be lightly attributed to
19 Congress. . . . The state in adopting and enforcing the [raisin marketing]
20 program made no contract or agreement and entered into no conspiracy in
21 restraint of trade or to establish a monopoly *but, as a sovereign, imposed the*
22 *restraint as an act of government which the Sherman Act did not undertake to*
23 *prohibit.*

24 *Id.* at 350-52 (emphasis added).

25 Under subsequent Supreme Court decisions, *Parker* “state action” immunity has been
26 applied to certain actions of private parties pursuant to state policies and state-approved
27 programs. In *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445
28 U.S. 97 (1980)(“*Midcal*”), the Supreme Court announced two requirements for private
parties to receive such “state action” immunity from antitrust liability: “First, the challenged
restraint must be one clearly articulated and affirmatively expressed as state policy; second,
the policy must be actively supervised by the State itself.” *Id.* at 105 (quotation marks

1 removed). The Court of Appeals for the Ninth Circuit recently restated the *Midcal* test for
2 antitrust immunity based on “state action”:

3 *Midcal*, which provides the framework for evaluating claims of state action
4 immunity under *Parker*, articulates a two-part test for immunity to apply. First,
5 the challenged restraint must be one clearly articulated and affirmatively
6 expressed as state policy; second, the policy must be actively supervised by the
7 State itself.

8 *Costco Wholesale Corporation v. Maleng*, 522 F.3d 874, 886 (9th Cir. 2008)(quotation
9 marks removed); *see also Sanders v. Brown*, 504 F.3d 903, 915 (9th Cir. 2007); *Brown v.*
10 *Ticor Title Ins. Company*, 982 F.2d 386, 392 (9th Cir. 1992).

11 According to the Sixth Circuit, “Both *Midcal* elements ‘are directed at ensuring that
12 particular anticompetitive mechanisms operate because of a deliberate and intended state
13 policy.’” *First American Title Co. v. Devaugh*, 480 F.3d 438, 445 (6th Cir. 2007)(quoting
14 *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992)). The active supervision prong
15 “requires that state officials have and exercise power to review particular anticompetitive
16 acts of private parties and disapprove of those that fail to accord with state policy.” *Patrick*
17 *v. Burget*, 486 U.S. 94, 101 (1988). “The key question is whether the allegedly
18 anticompetitive restraint may be considered the product of sovereign state action. If it is not,
19 then even if sectors of state government are involved, the activity will not constitute ‘state
20 action’ under the *Parker* doctrine and will not receive immunity.” *A.D. Bedell Wholesale*
21 *Company v. Philip Morris Incorporated*, 263 F.3d 239, 254 (3rd Cir. 2001). “Because it is
22 grounded in federalism and respect for state sovereignty, this interest in protecting the acts
23 of the sovereign state, even if anticompetitive, outweighs the importance of a freely
24 competitive marketplace, especially in the absence of contrary congressional intent.” *Id.* at
25 254-55.

26 Thus, consistent with Arizona utility practice and procedure, the State, acting through
27 the Commission, may authorize monopolies in the area of utility service as a matter of state
28 policy and sovereignty:

1 When a state clearly acts in its sovereign capacity it avoids the constraints of
2 the Sherman Act and may act anticompetitively to further other policy goals. . .
3 . For example, state governments frequently sanction monopolies to ensure
4 consistent provision of essential services like electric power, gas, cable
5 television, or local telephone service. But a state does not give immunity to
6 those who violate the Sherman Act by authorizing them to violate it, or by
7 declaring that their action is lawful. . . . *Only an affirmative decision by the*
8 *state itself, acting in its sovereign capacity, and with active supervision, can*
9 *immunize otherwise anticompetitive activity.*

10 *Id.* at 255 (emphasis added; citations and quotation marks removed).

11 Of course, the Commission is not being compelled to grant anything within the
12 parties' Planning Areas; those areas exist as part of the Settlement to define planning areas
13 as between the two parties only. Still, it is important and appropriate to provide for state
14 action protection to the parties to remove any doubt that such planning actions in the public
15 interest are protected from antitrust challenges. The factual situation in one Arizona-based
16 antitrust decision, *Community Builders, Inc. v. City of Phoenix*, 652 F.2d 823 (9th Cir. 1981),
17 exhibits clear parallels to the situation created by the Settlement and demonstrates the
18 benefits that would flow from Commission approval of the Settlement. In *Community*
19 *Builders*, the cities of Phoenix and Scottsdale had settled various disputes over the provision
20 of water service by the municipal water utilities by entering into an agreement which
21 divided up water service areas between the two cities' municipal water companies. *Id.* at
22 825. The plaintiff developer owned land within Scottsdale's water service territory but
23 preferred to receive water service from Phoenix because Phoenix did not charge a water
24 hookup fee. When the two cities insisted that the developer receive service from Scottsdale
25 based on their agreed division of service territory, the developer sued both cities for federal
26 antitrust violations. *Id.*

27 The Ninth Circuit first held that the settlement and division of service territory
28 between the two municipal water companies substantially affected interstate commerce
because the developer's financing would come from out-of-state sources. "A multimillion
dollar project dependent largely on out-of-state financing has been hit with an additional

1 expense which will surely affect the quality of the investment itself.” *Community Builders*,
2 652 F.2d at 828.

3 The Ninth Circuit affirmed summary judgment dismissing plaintiff’s antitrust claims
4 because the Legislature’s enactment of A.R.S. §9-516 indicated that Arizona had a state
5 policy approving the cities’ actions, thus providing the cities with antitrust immunity under
6 the “state action” doctrine of *Parker* and *Midcal*. See 652 F.2d at 828-30. The Ninth Circuit
7 found that “The Arizona Supreme Court has interpreted § 9-516 to prohibit competition
8 between a municipal utility and a utility owned by another municipality.” *Id.* at 826.
9 “Public utility water companies have traditionally been regarded as natural monopolies
10 because of the economic waste resulting from duplicative service facilities. By enacting § 9-
11 516, Arizona has adopted a specific declaration of policy recognizing the status of
12 [municipally owned] utilities as natural monopolies.” *Id.* at 829.

13 As with the settlement in *Community Builders*, the Settlement between Arizona
14 Water Company and Global also involves an agreed division of planning areas and potential
15 service areas. However, unlike the situation in *Community Builders*, A.R.S. § 9-516, which
16 regulates the conduct of *publicly owned* utilities, has no direct applicability to the Settlement
17 between two private utilities such as Arizona Water Company and Global, and thus the
18 “state action” immunity based on that statute is inapplicable in this instance. Instead, under
19 *Parker* and *Midcal*, the relevant terms of the Settlement should be “clearly articulated and
20 affirmatively expressed as state policy” and “actively supervised by the state itself.” *Midcal*,
21 445 U.S. at 105. The Commission’s affirmative approval and supervision of the Settlement
22 and the Planning Areas would confirm the public benefits of the Settlement by providing the
23 parties with immunity from potential antitrust claims. This factor presents another
24 compelling reason for specific Commission approval of both aspects of the parties’
25 agreements.
26
27

1 **III. THE COMMISSION SHOULD GRANT ARIZONA WATER COMPANY'S**
2 **AMENDED APPLICATION TO EXTEND ITS CERTIFICATE OF**
3 **CONVENIENCE AND NECESSITY TO THE REQUESTED AREA.**

4 **A. There Is a Need for Service in Arizona Water Company's Requested Area**
5 **and Arizona Water Company Is the Fit, Proper and Logical Water Utility**
6 **to Provide that Service.**

7 As detailed at the hearing on June 8-9, 2009, 24 separate landowners within Arizona
8 Water Company's amended CCN extension application area have requested water service,
9 including five landowners owning a section or more of property. *See* Ex. A-3, A-4; *see also*
10 F. Schneider Supplemental Affidavit filed July 9, 2009. Included among the landowners
11 requesting service is the State itself, which owns 4,480 acres within the extension area.
12 Twenty-one landowners have provided Arizona Water Company with updated requests for
13 service within the last eight months – even though such updated requests were not required
14 by the Commission's rules or customary under Commission practice. Ex. A-3, A-4. The
15 need for water service in the extension area is also shown by General Plans prepared by
16 Pinal County and the cities of Casa Grande and Maricopa, as well as the plans of developers.
17 Ex. A-2 at 10-11 and attached exhibits WMG 8-12. While the fluctuations in the housing
18 market have temporarily slowed development in western Pinal County, there is no doubt that
19 development will resume again, and with it the need for water service.

20 Arizona Water Company's CCN application and the evidence in this proceeding
21 confirm that the Company is ready, willing and able to serve, and is the fit and proper entity
22 to receive a CCN in the area. *See* Ex. A-1 at 8-30 (Garfield Prefiled Testimony discussing
23 Arizona Water Company's operations and resources in Arizona and Pinal County, including
24 its 50-year history, water resources, capital investment in wells, storage facilities and other
25 infrastructure, CAP allocations, depth of experience, good standing with the Commission
26 and other state agencies, growth rate, financial resources, efforts to promote water
27 conservation and the use of reclaimed water, and Master Plan to serve the area). Arizona
28 Water Company already has a franchise to serve the entire area and the support of local
governments. *Id.* at 22. Arizona Water Company also provided an updated design report

1 for service to the area, including the provision of adequate flow for fire protection. *See* Ex.
2 A-10. Arizona Water Company proposes charging its current Casa Grande rates for the
3 extension area.² *See* Ex. A-1 at 30.

4 The Staff agrees that Arizona Water Company has both financial stability and
5 engineering expertise making it fit to serve the CCN extension area. Thus, the Staff has
6 concluded that Arizona Water Company's "proposal to serve the CC&N expansion area is
7 reasonable" and Arizona Water Company's production and storage capacity to serve the
8 proposed extension areas are adequate. Ex. S-1, attached Staff Report dated March 26, 2009
9 by Marlin Scott at 3-4; *id.* at 7. Similarly, the Staff has found that "Clearly, Arizona Water's
10 financial health is not cause for concern," and "Arizona Water's financial health would
11 support customer growth in the extension areas." Ex. S-2, attached Staff Report of Linda
12 Jaress at 3. In short, no one disputes that Arizona Water Company is ready, willing and able
13 to serve the extension area and is a fit entity to receive the CCN to serve that area.

14 **B. The Requested Area Follows Logical and Supportable Geographic**
15 **Boundaries and Should Be Approved by the Commission.**

16 Arizona Water Company's extension request, which corresponds to its Planning Area
17 boundaries in western Pinal County as contained in the Settlement, follows logical and
18 supportable geographic boundaries and should be approved by the Commission in its
19 entirety. As noted previously, the boundaries are based on the prior recommendations by
20 Staff, follow major thoroughfares, and anticipate the water service needs of planned
21 developments. Ex. A-1 at 7; Tr. 81-83. Arizona Water Company proposed that the northern
22 boundary of the Tohono O'odham Reservation serve as the southern boundary of its CCN
23 application area, which would form a logical endpoint to Arizona Water Company's
24 expansion to the south in this area and remove the chance for an isolated, unserved fragment

25 _____
26 ² Arizona Water Company has a pending rate application that proposes consolidation
27 of its Casa Grande, Stanfield and Coolidge rates into one rate, which would provide
28 rate stability and lower rates than most other water provider rates in Pinal County.
Ex. A-10 at 30.

1 to be left behind. Tr. at 81, 83. As the western boundary, Arizona Water Company chose a
2 main thoroughfare, the John Wayne Parkway, which would serve as a clear dividing line
3 between Arizona Water Company's service area and the utility that will ultimately provide
4 water service to the west of that highway. *Id.* at 83. The northern boundary in the Stanfield
5 area in part follows Kortsen Road, as recommended by the Staff, and strives to anticipate the
6 water service needs of planned developments. *Id.* at 83.

7 Consolidating the Casa Grande and Stanfield water systems is also a prime
8 consideration supporting the particular CCN boundaries sought by Arizona Water Company.
9 At their closest point, the Casa Grande and Stanfield CCN areas are currently separated by
10 only one mile – along Selma Road between Anderson and Russell. Tr. 80, 82. As part of its
11 regional planning efforts, Arizona Water Company has planned to interconnect the Casa
12 Grande and Stanfield water systems into one regional system. *Id.* at 82. With the Francisco
13 Grande system becoming part of Global's CCN area under the Settlement, interconnections
14 between the Casa Grande and Stanfield systems would be placed into a much narrower
15 geographic area that would not provide the same efficiencies, redundancies and quality as a
16 larger-scale grid of connective transmission lines between the two areas that would be
17 allowed with additional expanded CCN area further to the south. Tr. 86. Under Arizona
18 Water Company's proposed CCN expansion, the bridge between the two CCN areas would
19 be approximately five miles north to south, allowing numerous interconnections between the
20 two water systems. *Id.* at 84. Permitting multiple interconnections between the two systems
21 makes good engineering sense because the systems are intended to become one regional
22 water system. *Id.* This single regional water system will operate more efficiently and
23 reliably, reducing costs and greatly benefiting the public. *See* Ex. A-8 (Schneider Opening
24 Testimony) at 6-8.

1 **C. The Staff's Unduly Narrow Focus on Requiring More Requests for**
2 **Service (and Now Even "Paired Requests" for Both Water and Sewer**
3 **Service) as the Sole Determining Factor to Consider in Extension**
4 **Requests Should Be Rejected.**

5 **1. The Staff's Focus on More Requests for Service Disregards**
6 **Numerous Other Factors That the Commission Should Consider**
7 **When Granting a CCN.**

8 As noted above, 24 landowners within the proposed extension area have requested
9 water service, including 21 "updated" requests within the last few months. *See* Ex. A-3, A-
10 4. The Staff has turned the issue of requests for service into the *sole* consideration in the
11 decision to grant a CCN extension, and has proposed that Arizona Water Company's CCN
12 area be restricted to include only an extremely limited number of landowners within the
13 group of landowners requesting water service.³ The Staff's exclusive emphasis on the
14 number of requests for service received, even requiring "updated" requests for service, has
15 no basis in statute, Commission regulations, or good public policy. Ex. A-2 at 4-5, 7; Tr.
16 318-19.

17 As extensively discussed in the prefiled testimony and at the evidentiary hearing, the
18 Staff in prior proceedings has used a nine-factor test for determining whether to include an
19 area lacking a request for service within a CCN. *See* Ex. A-1 at 25-27 (discussing the nine-
20 factors presented in a Staff Report in Docket No. W-01445-06-0059); Ex. A-2 at 11-15
21 (discussing Staff Reports in both Docket No. W-01445-06-0059 and Docket No. W-01445-
22 06-0317); Tr. 340-45. The nine factors outlined by the Staff included such crucial
23 considerations as the effect of inclusion or exclusion on the utility's operation efficiencies,
24 contiguity to the existing CCN of the utility, the utility's financial soundness, and whether a
25 potential customer requested to be *excluded* from the CCN. *Id.* Taking into account all of

26 ³ Out of the 24 parcels identified on Ex. A-3, the Staff is now recommending that
27 Arizona Water Company's CCN be extended to cover only *nine* parcels, that is,
28 Parcel Nos. 4 (Brimhall Properties), 5 (Hondo 640), 6 (Parker Estates), 7 (Rio Lobo),
 8 (Carranza Associates), 9 (Langley Stanfield Estates), 12 (Hampden & Chambers),
 15 (BCY Limited Partnership) and 19 (BET Investments). Tr. 310, 319.

1 these factors, the Commission should approve extension of Arizona Water Company's CCN
2 to the entire requested area, not merely a patchwork of isolated parcels recommended by the
3 Staff. Commission approval of the entire amended application area would ensure increased
4 operation efficiencies, "round off" Arizona Water Company's CCN area, and allow
5 interconnection of the Casa Grande and Stanfield systems into an integrated water system.

6 Moreover, the Staff's insistence on inch-by-inch requests for service before granting
7 a CCN extension is contrary to sound public policy and results in piecemeal CCNs, a
8 patchwork of isolated water systems, and numerous engineering problems. *See* Ex. A-9
9 (Schneider Rebuttal Testimony) at 3-7. Rather than engaging in long-range, regional water
10 infrastructure and water supply planning, water utilities would be forced to employ isolated
11 and ad hoc engineering solutions for a patchwork of developments. The developers and
12 their lenders – not the Commission – would be determining factors of when and in what
13 manner to extend a CCN. This is the opposite of sound public policy and long-range
14 planning – and would also tie up the Commission with repeated hearings on CCN
15 applications related to one isolated project after another.

16 The Staff's focus on updated requests for service also ignores the fact that not a
17 single landowner formally objected to the extension of Arizona Water Company's CCN to
18 provide water service to their property, Ex. A-2 at 8, Ex. A-9 at 8-9, despite the fact that
19 Arizona Water Company gave written and publication notice of the hearing to every
20 landowner in the amended extension area. Ex. A-1 at 28, Ex. A-2 at 7. Rather than
21 protecting the perceived interests of landowners, the Staff's position now results in the
22 frustration of landowners who desire to develop their properties and have requested service,
23 or have remained silent in the comfort of knowing that their development properties will be
24 covered by a CCN held by a competent public service corporation like Arizona Water
25 Company.

26
27

28

1 2. **The Staff's Position Concerning Requests for Service Has Become**
2 **Even More Impractical and Illogical Because of the Staff's Recent**
3 **Insistence of "Paired Requests" for Both Water and Wastewater**
4 **Service.**

5 Beyond insisting on more requests for water service, and even "updated" requests for
6 service, Staff has now taken the unprecedented position of requiring "paired requests" for
7 both water *and sewer* service as a condition for expanding a water CCN. Tr. 339.
8 Effectively the Staff has taken the position that the Commission should not approve a CCN
9 for water service unless a landowner has also requested wastewater or sewer service from a
10 different entity. Staff's position lacks any basis in Arizona law, the Commission's
11 regulations, or the Commission's prior practice in granting water CCNs. Ex. A-2 at 6. The
12 Staff has added this requirement even though the entire CCN extension area sought in
13 Arizona Water Company's amended application falls within the wastewater planning areas
14 of Global or the City of Casa Grande. *Id.* at 8-9.

15 The Staff's new and extraordinary requirement will stymie development and lead to
16 irrational results. Ex. A-2 at 9. In many cases, a landowner would be denied water service
17 even though the landowner requested water service from Arizona Water Company and
18 awarding the CCN to Arizona Water Company would make sense from every practical,
19 engineering and financial perspective. The peculiar and incongruous results of the Staff's
20 self-imposed⁴ requirement becomes clear by examining a few of the parcels to which the
21 Staff would now deny water service. Parcels 1 (Jue), 2 (Holt) and 3 (Whipple) on Ex. A-3
22 are comparatively small parcels which are contiguous (or nearly so) to Arizona Water
23 Company's Casa Grande CCN. The owners of the three parcels requested water service
24 long ago and recently updated those requests. However, the Staff would deny water service
25 to the owners of those three parcels because they lie outside the Casa Grande city limits --
26 even though they are located within Casa Grande's wastewater service planning area, Casa

27 ⁴ Neither the Staff nor the Commission has issued, much less adopted, any such rule or
28 requirement.

Grande is the only logical sewer provider, and Casa Grande has made provision for wastewater service in its Section 208 plan.⁵ Tr. 310, 349-50.

Parcels A (SMT Investments) and D (Bingham Arizona Land LLC) are much larger parcels – 1,823 and 1,528 acres respectively – and are also contiguous to Arizona Water Company's Casa Grande CCN area and within the sewer planning area of Casa Grande or Global. Tr. 350-51; Ex. A-7. They also suffer a similar fate from the Staff, that is, Staff would deny their requested water service because they did not also request wastewater service. Tr. 350-51. The Staff would also deny water service to another contiguous project, Parcel 14 (Jorde Hacienda), which at 2,523 acres is the third largest project in the amended extension area. The Staff's rationale is that Jorde Hacienda has not requested sewer service, even though the parcel lies within Global's 208 wastewater service planning area and would certainly receive sewer service from Global. Tr. 322-28; Ex. A-7.

Perhaps the most irrational result of the Staff's new policy involves the parcel bordered by Selma, Russell, Carranza and Murray Roads. *See* Ex. A-3. The parcel lies between and contiguous to Arizona Water Company's Casa Grande and Stanfield CCN areas, and it is illogical from an engineering or policy standpoint that any other water utility would ever serve the parcel. Because of the parcel's location, any future interconnection between Casa Grande and Stanfield systems would cross the parcel. The parcel is owned by the State of Arizona – which has requested water service. The parcel also lies near parcels 8 and 9, which the Staff recommends be included in Arizona Water Company's CCN. Yet, despite the desires of the landowner and the obvious engineering and other practical reasons to include the parcel in Arizona Water Company's CCN, the Staff would still deny the parcel service because the State has not also requested sewer service. Tr. 356-59.

⁵ Under Section 208 of the Federal Clean Water Act, an entity that plans to provide wastewater service in Pinal County must have its plans approved by the Central Arizona Association of Governments as part of the process of becoming the wastewater provider for a particular area. Tr. 97-98.


1 As these examples make clear, the Staff's new, unprecedented, unofficial and self-
2 imposed requirement of paired requests for both water and sewer service before
3 recommending approval of water service disrupts orderly planning and results in numerous
4 absurdities – including the denial of water service to contiguous parcels and the rejection of
5 water service requests from the State. Ex. A-2 at 9-10. The Commission should reject the
6 Staff's eleventh-hour, self-imposed rules and not condition the grant of a water service CCN
7 upon a request for sewer service.

8 CONCLUSION

9 For the foregoing reasons, and based on the pre-filed testimony, witnesses' testimony
10 and exhibits presented at the hearing in this matter on June 8-9, 2009, the Commission
11 should grant Arizona Water Company's application to extend its CCN to the requested area.
12 The Commission should also approve the Settlement between Arizona Water Company and
13 Global and the Planning Areas agreed to in the Settlement.

14 RESPECTFULLY SUBMITTED this 3rd day of August, 2009.

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